IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE THE CHIEF JUSTICE MR.V.K.BALI
&
THE HONOURABLE MR. JUSTICE P.R.RAMAN

FRIDAY, THE 8TH DECEMBER 2006 / 17TH AGRAHAYANA 1928

**W.A.No.47 of 2006(E)**

AGAINST THE JUDGEMENT IN W.P.(C).20938/2005 DATED 09/12/2005

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APPELLANTS/ADDITIONAL RESPONDENTS 5 & 6:-

1. P.M. GEORGE, AGED 70 YEARS,
   S/O. LATE SRI. MATHULLA, ELOOR
   PANNIKKUZHIYIL, KOLENCHERRY, ERNAKULAM DISTRICT.

2. K.S. VARGHESE, KAVANAMCHUVATTIL,
   KINGINIMATTOM KARA, KINGINIMATTOM P.O.,
   KOLENCHERRY, ERNAKULAM DISTRICT.

BY ADV. SRI.V.GIRI

RESPONDENTS/PETITIONERS AND RESPONDENTS 1 TO 4:-

1. THOMAS M. ALIAS, S/O. ALIAS,
   MUNDAYI, PERINGOLE KARA, KOLENCHERRY,
   AIKKARANADU NORTH VILLAGE, KUNNATHUNAD TALUK.

2. JOGI GEORGE, SON OF C.M. GEORGE,
   CHOLATTU HOUSE, VADAYAMPADI P.O.,
   PUTHENCRUZ, AIKKARANAD NORTH VILLAGE.

3. STATE OF KERALA, REPRESENTED BY THE
   DISTRICT COLLECTOR AND DISTRICT
   MAGISTRATE, ERNAKULAM.

4. THE CIRCLE INSPECTOR OF POLICE,
   PUTHENCRUZ.

5. THE SUB DIVISIONAL MAGISTRATE,
   MUVATTUPUZHA.

6. M.I. FRANCIS, SUB DIVISIONAL MAGISTRATE
   MUVATTUPUZHA.

R1 & R2 BY ADV. SRI.BIJU ABRAHAM
R4 TO R6 BY SENIOR GOVERNMENT PLEADER SRI.M.R.SABU.

SRI.N.K.KARNIS
SRI.SAJI VARGHESE KAKKATTUMATTATHIL

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 08/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:-

**V.K.Bali,C.J. & P.R.Raman,J.**

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W.A.No.47 of 2006-E

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Dated, this the 8th day of December, 2006

**JUDGMENT**

**V.K.Bali, C.J.** (Oral)

After arguing for some time, learned counsel for the appellants says that the Writ Appeal be dismissed as withdrawn with liberty to the appellants to file a civil suit. Counsel made this statement for the reason that if there is a civil Court decision, it shall have precedence over the decision made by the Sub Divisional Magistrate under Section 145/146 of the Code of Criminal Procedure. He only requests that for about fifteen days from today, enabling the appellants to file a civil suit, in which they may also make an application for ad interim order, the key of the Church, which is already with the Sub Divisional Magistrate, may be directed to remain with him.

2. We have considered the prayer of the learned counsel and we are of the view that the same needs to be

accepted as, indeed, Civil Court decree shall have precedence over proceedings under Section 145/146 of the Code of Criminal Procedure. The present appeal is permitted to be withdrawn with liberty to file a Civil Suit. The key of the Church shall remain with the concerned Sub Divisional Magistrate for a period of fifteen days from today and thereafter it will be only at the discretion of the concerned civil Court to pass appropriate interim directions in accordance with law after hearing the concerned parties. I.A.No.307 of 2006 shall stand dismissed.

V.K.Bali
Chief Justice

P.R.Raman
Judge

vku/-